IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25012 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYAPARKASH SOMABHAI GAMETI - Petitioner(s)

Versus

POLICE COMMISSIONER-AHMEDABAD POLICE COMMISSIONER OFFICE & 2 - Respondent(s)

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Appearance :

MR HARSHAD K PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 31/01/2006

ORAL JUDGMENT

1. The petitioner has filed this habeas corpus petition under Article 226 of the Constitution of India challenging the order of detention dated 10.10.05

passed by the Police Commissioner, Ahmedabad respondent No.1 herein under provisions of Gujarat Prevention of Anti Social Activities Act, 1985 as being illegal, invalid, arbitrary, void ab initio suffers from total non application of mind and also in violation of provisions of Articles 14, 19, 21 and 22 of the Constitution of India and in violation of provisions of the Act. The petition was filed on 22.12.05 when the matter was placed for hearing before this Court, this Court has issued Rule on 29.12.05 returnable on 23.1.06. On 25.1.06 the matter was placed again for hearing, and as one of the respondents was not served, thereafter fresh Rule was issued returnable on 31.1.06. Mr. Pujari learned AGP for the respondents appears. With the consent of the parties the matter is taken up for final hearing before this Court.

2. Mr. Harshad Patel learned advocate for the petitioner has also invited my attention to the order of detention dated 10.10.05 passed by the detaining authority . He has also my attention to the order of committal dated 10.10.05 by which the petitioner was put in Surat Jail. He has also invited my attention to

the grounds given by the authority to the petitioner also on the same day. The grounds revealed that the petitioner has committed solitary offence under East Prohibition Station on 24.9.05 under provisions of section 66 (1) B , 65 E, 81 of Bombay Prohibition Act. It is alleged that the petitioner stored 860 lts of country liquor and one Mahendra jeep valued at Rs 50,000/-. It has been further alleged that the country liquor is injurious to health and the petitioner is carrying on antisocial activities and he has been considered as bootlegger defined under section 2(b) of the Act. Mr. Pujari crave leave to, refer to and rely upon the authority in this behalf to try and support the authority on the ground in this behalf.

3. Mr. Harshad Patel learned advocate state that when there is solitary offence which is also under provisions of PASA Act. The authority could not have been subjectively satisfied to detain the petitioner in this behalf in support of the same the petitioner have relied upon the judgement of the Apex Court in the case of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491** and

another judgement of the Apex Court in the case of **Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu & Others reported in AIR 2003 SC 971** for solitary offence and also the Division Bench Judgement of this Court reported **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393 .**

4. On behalf of the respondent the affidavit has not been filed however, Mr. Pujari has tried to support the ground stated in this behalf.

5. Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti social and criminal activities again.

6. I am of the view that this matter is covered by the judgement of the Supreme Court in Piyush Kantilal

(supra) and Darpankumar (supra) and Division Bench judgement in this behalf.

7. The petition is allowed. The order of detention dated 10/10/2005 is quashed and set aside. The detenu Jayprakash Somabhai Gameti is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M.MEHTA, J)

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